

6.11. A PA Participant's audits will be in accordance with its own national practices. Each PA Participant will be responsible for the audit of its activities or its Contractors' activities pursuant to a PA. For PAs where funds are transferred between the PA Participants, the receiving PA Participant will be responsible for the internal audit regarding administration of the other PA Participant's funds in accordance with the receiving PA Participant's national practices. The receiving PA Participant will promptly make audit reports of such funds available to the other PA Participant(s).

SECTION 7

CONTRACTING PROVISIONS

7.1. Contracting under this MOU will only be executed under PAs. If a PA Participant determines that Contracting is necessary to fulfill that PA Participant's responsibilities specified in the relevant PA, that PA Participant will contract in accordance with its national laws, regulations, and procedures. Unless otherwise specified in the relevant PA, sources from all PA Participants' industries will be allowed to compete on an equal basis for such Contracts.

7.2. When one PA Participant individually contracts to perform a task under a PA, it will be solely responsible for its own Contracting, and the other PA Participants will not be subject to any liability arising from such Contracts without their prior written consent.

7.3. For all Contracting activities performed by the PA Participants on behalf of one or more of the other PA Participants, the POs will, upon request, be provided a copy of all statements of work prior to the development of solicitations to ensure they are consistent with the provisions of the PA and this MOU.

7.4. As specified in the corresponding PAs, the POs may make use of a PA Participant's Contracting Agency in the event that Contracting on behalf of one or more PA Participants is required to implement the PA. The Contracting Agency so used will place Contracts in accordance with its respective national laws, regulations, and procedures. Unless otherwise specified in the PA, sources from all PA Participants' industries will be allowed to compete on an equal basis for such Contracts. The Contracting Participant's Contracting Officer will be the exclusive source for providing contractual direction and instructions to the Contractors. The POs will be responsible for the coordination of activities relating to a PA and will cooperate with the Contracting Officer in the areas of Contract procedures, Contract negotiation, evaluation of offers and Contract award. The Contracting Officer will keep the POs advised of all financial arrangements with Contractors.

7.5. Each PA Participant's Contracting Agency will insert into its prospective Contracts (and require its Contractors to insert in subcontracts) suitable provisions to satisfy the requirements of this MOU including Section 8 (Project Equipment), Section 9

(Disclosure and Use of Information), Section 10 (Controlled Unclassified Information), Section 12 (Security), Section 13 (Third Party Sales and Transfers), and Section 19 (General Provision) including suitable provisions that require Contractors to comply with the respective Participants' applicable export control laws and regulations, and any corresponding provisions in the PAs. Each PA Participant's Contracting Agency will negotiate to obtain the rights to use and disclose Project Information required by Section 9 (Disclosure and Use of Information). During the Contracting process, each PA Participant will also advise prospective Contractors of their responsibility to immediately notify their respective PA Participant's Contracting Agency, before Contract award, if they are subject to any license or agreement that will restrict their government's freedom to disclose Information or permit its use, and to employ their best efforts not to enter into any new agreement or arrangement that will result in restrictions.

7.6. The transfer of export-controlled Information furnished by one Participant will be authorized by the government of the furnishing Participant only to those Contractors of another Participant who will limit the end use of the Information received for the sole purpose of furthering the purposes authorized under this MOU or an applicable PA. The Participants will establish legal arrangements with their Contractors to require that their Contractors do not retransfer or otherwise use export-controlled Information for any purpose other than the purposes authorized under this MOU and an applicable PA. Such legal arrangements will also provide that the Contractor will not retransfer the export-controlled Information to another Contractor without the consent of the furnishing Participant's government.

7.7. In the event a PA Participant's Contracting Agency is unable to secure adequate rights to use and disclose Project Information as required by Section 9 (Disclosure and Use of Information), or is notified by Contractors or prospective Contractors of any restrictions on the disclosure and use of Project Information, that PA Participant's Contracting Agency will refer the matter to the POs.

7.8. Each PO will promptly advise the other POs of any anticipated or actual cost growth, schedule changes, delay, or performance problems of any Contractor for which its Contracting Agency is responsible.

7.9. Upon mutual consent and consistent with the objectives of a PA, a PA Participant may contract for the unique national requirements of another PA Participant.

SECTION 8

PROJECT EQUIPMENT

8.1. Each PA Participant may provide Project Equipment identified as being necessary for implementing a PA to another PA Participant. Project Equipment will remain the property of the providing PA Participant. The PA will list all Project Equipment to be provided, if any, and set out the specific details of the transfer including the period of the transfer, whether the Project Equipment may be transferred to a Contractor, and the Project Equipment value. Project Equipment identified at the time of PA signature will be set out in the PA in accordance with Annex A. Project Equipment that cannot be identified at the time of PA signature will be documented in a list to be developed and maintained by the POs, in accordance with the format in the PA prior to such transfers. Approval for all transfers, including transfers by the receiving PA Participant to a Contractor, will be in accordance with the national procedures of the relevant PA Participants.

8.2. The providing PA Participant will furnish the Project Equipment in a serviceable and operable condition according to the intended purpose stated in the PA. However, the providing PA Participant gives no assurance of fitness of the Project Equipment for a particular purpose or use, and makes no commitment to alter, improve, or adapt the Project Equipment or any part thereof.

8.3. The receiving PA Participant will maintain any such Project Equipment in good order, repair, and operable condition. Unless the providing PA Participant has authorized the Project Equipment to be expended or otherwise consumed without reimbursement to the providing PA Participant, the receiving PA Participant will return the Project Equipment to the providing PA Participant in as good condition as received, normal wear and tear excepted, or return the Project Equipment and pay the cost to restore it. If the Project Equipment is damaged beyond economical repair, the receiving PA Participant will return the Project Equipment to the providing PA Participant (unless otherwise specified in writing by the providing PA Participant) and pay its replacement value as computed pursuant to the providing PA Participant's national laws, regulations and procedures. If the Project Equipment is lost while in the custody of the receiving PA Participant, the receiving PA Participant will issue a certificate of loss to the providing PA Participant and pay the replacement value as computed pursuant

to the providing PA Participant's national laws, regulations and procedures. If known at the time of entry into effect, the replacement value of the Project Equipment will be specified in the PA.

8.4. The providing PA Participant will, at its expense, deliver Project Equipment to the receiving PA Participant at a mutually determined location. Possession of the Project Equipment will pass from the providing PA Participant to the receiving PA Participant at the time of receipt of the Project Equipment. Any further transportation is the responsibility of the receiving PA Participant.

8.5. The providing PA Participant will furnish the receiving PA Participant such Information as is necessary to enable the Project Equipment to be used. If the PA Participants mutually determine that specific training is required for use of Project Equipment, they will mutually determine the conditions for the provision of such training.

8.6. All Project Equipment that is transferred will be used by the receiving PA Participant only for the purposes of carrying out the PA, unless otherwise consented to in writing by the providing PA Participant. In addition, in accordance with Section 13 (Third Party Sales and Transfers) Project Equipment will not be re-transferred to a Third Party without the prior written consent of the providing PA Participant.

8.7. The providing PA Participant will transfer the Project Equipment for the mutually determined transfer period. The transfer period may be extended by the written mutual consent of the PA Participants concerned, provided that the duration does not exceed the effective period of the PA. Project Equipment transferred to one PA Participant under the PA will be returned to the providing PA Participant prior to the termination or expiration of the PA and prior to the withdrawal of either PA Participant from the PA or the MOU.

8.8. Upon expiration or termination of the transfer period (taking into account any mutually determined extension), the receiving PA Participant at its expense will return Project Equipment to the providing PA Participant at a mutually determined location. Responsibility for Project Equipment will pass from the receiving PA Participant to the providing PA Participant at the time of receipt. Any further transportation is the responsibility of the providing PA Participant.

8.9. The PA Participants will ensure, by all reasonable means, the protection of Intellectual Property Rights in Project Equipment.

8.10. Project Equipment that is jointly acquired is subject to the following provisions unless otherwise mutually determined by the involved PA Participants:

8.10.1. Any Project Equipment that is jointly acquired by the PA Participants for use under a PA will be disposed of during the project or when the project ceases, as mutually determined by the PSC or the POs.

8.10.2. Jointly acquired Project Equipment will remain the property of the acquiring PA Participants in the same ratio as costs are shared in the PA under which it is jointly acquired.

8.10.3. The PA Participant or PA Participants who have custody of the jointly acquired Project Equipment will maintain such jointly acquired Project Equipment in good order, repair and operable condition, normal wear and tear excepted, unless the PA Participants have mutually determined that it be expended or otherwise consumed by the PA Participant(s) in connection with the project.

8.10.4. If jointly acquired Project Equipment is damaged or lost while in the custody of a Participant, the provisions of paragraph 8.3 will apply.

8.10.5. Where a person or entity, other than the PA Participants (including their personnel), damages jointly acquired Project Equipment, and the cost of making good such damage to the Project Equipment is not recoverable from such person or entity, the PA Participants will share such costs in the same ratios as their financial contributions to the PA.

8.10.6. Disposal of jointly acquired equipment may include a transfer of the interest of one PA Participant in such Project Equipment to another PA Participant, transfer or sale to a non-Third Party, or the transfer or sale of such equipment to a Third Party in accordance with Section 13 (Third Party Sales and Transfers) of this MOU. The PA Participants will share the consideration from jointly acquired Project Equipment transferred or sold in the same

ratio as costs are shared under the PA.

SECTION 9

DISCLOSURE AND USE OF INFORMATION

GENERAL PROVISIONS

9.1. The Participants recognize that successful cooperation depends on full and prompt exchange of Information necessary for carrying out the provisions of this MOU and each PA. The Participants intend to exchange sufficient Information and develop reports under the MOU to carry out paragraph 3.1 of Section 3 (Scope of Work) of this MOU. The Participants also intend to acquire sufficient Information and rights to use such Information to enable successful F/A-18 PAs. The nature and amount of Information to be acquired will be consistent with this MOU, and the specific requirements set out in the corresponding PAs. Transfer of such Information to Contractors will be consistent with each respective Participant's applicable export control laws and regulations.

9.2. Information subject to Intellectual Property Rights

9.2.1. All Information subject to Intellectual Property Rights will be identified, marked and, where unclassified, it will be handled as Controlled Unclassified Information and in accordance with any applicable multilateral or bilateral treaties, agreements or arrangements between the Participants concerned.

9.2.2. In addition to paragraph 10.4 of Section 10 (Controlled Unclassified Information) and any applicable multilateral or bilateral treaties, agreements or arrangements on the handling of Information subject to Intellectual Property Rights, before an MOU or PA Participant transfers Information subject to Intellectual Property Rights to a Contractor, the Participant will ensure that its Contractor has entered into all necessary and appropriate arrangements (such as non-disclosure agreements) directly with the Contractor or other entity that owns the Information or otherwise holds Intellectual Property Rights in that Information.

PROVISIONS APPLICABLE TO INFORMATION EXCHANGED OR DEVELOPED
PURSUANT TO PARAGRAPH 3.1 OF SECTION 3 (SCOPE OF WORK)

9.3. The provisions that govern the disclosure and use of Information exchanged, but not Information developed jointly, pursuant to paragraph 3.1 of Section 3 (Scope of Work) of this MOU, are as follows:

9.3.1. A Participant may use or have used the Information exchanged under paragraph 3.1 of Section 3 (Scope of Work) of this MOU for MOU purposes only. The specific prior written consent of the furnishing Participant is required for any other use, disclosure, including disclosure to Contractors, or transfer of such Information to a Third Party.

9.3.2. A receiving Participant will ensure that Contractors to which it discloses Information received under paragraph 3.1 of Section 3 (Scope of Work) of this MOU are under a legally binding obligation not to further disclose such Information, or to use such Information for other than the purposes specified in paragraph 9.3.1 of this Section.

9.3.3. The Participants may exchange Information under paragraph 3.1 of Section 3 (Scope of Work) of this MOU only where the following conditions are met:

9.3.3.1. Information may be exchanged without incurring liability to holders of Intellectual Property Rights therein.

9.3.3.2. Disclosure of Information is consistent with national policies and regulations of the furnishing Participant.

9.4. Information generated in the reports developed jointly pursuant to paragraph 3.1 of Section 3 (Scope of Work) of this MOU will be disclosed without charge to all Participants. Each Participant may use such Information for Defense Purposes, subject to any Intellectual Property Rights restrictions. Any sale or other transfer to a Third Party will be subject to the provisions of Section 13 (Third Party Sales and Transfers) of this MOU.

PROVISIONS APPLICABLE TO PAs

9.5. Government Foreground Information

- 9.5.1. Disclosure: Government Foreground Information generated by a PA Participant's military or civilian employees will be disclosed without charge to the other PA Participants.
- 9.5.2. Use: Each PA Participant may use or have used on its behalf all Government Foreground Information without charge for Defense Purposes. The PA Participant generating Government Foreground Information will also retain its rights of use thereto. Any sale or other transfer to a Third Party will be subject to the provisions of Section 13 (Third Party Sales and Transfers) of this MOU.

9.6. Government Background Information

- 9.6.1. Disclosure: Each PA Participant, upon request, will disclose to the other PA Participants any relevant Government Background Information generated by its military or civilian employees, provided that:
 - 9.6.1.1. such Government Background Information is necessary to or useful in the PA, with the PA Participant in possession of the Information determining whether it is "necessary to" or "useful in" the PA;
 - 9.6.1.2. such Government Background Information may be made available without incurring liability to holders of Intellectual Property Rights;
 - 9.6.1.3. disclosure is consistent with national disclosure policies and regulations of the furnishing PA Participant; and
 - 9.6.1.4. any disclosure or transfer of such Government Background Information to Contractors is consistent with the furnishing Participant's export control laws and regulations.

9.6.2. Use: Government Background Information disclosed by one PA Participant to other PA Participants may be used without charge by or for the other PA Participants for PA purposes only; however, the furnishing PA Participant will retain all its rights with respect to such Government Background Information. To the extent consistent with paragraph 9.6.1, where the use of Government Background Information is necessary to enable the use of Foreground Information, such Government Background Information may be used without charge for Defense Purposes. The furnishing PA Participant, in consultation with the other PA Participant(s), will determine whether the use of such Government Background Information is necessary.

9.7. Contractor Foreground Information

9.7.1. Disclosure: Contractor Foreground Information generated and delivered by Contractors, will be disclosed without charge to the PA Participants.

9.7.2. Use: Each PA Participant may use or have used on its behalf without charge for its Defense Purposes all Contractor Foreground Information. The PA Participant whose Contractors generate and deliver Contractor Foreground Information will also retain rights of use thereto in accordance with the applicable Contract(s). Any sale or other transfer to a Third Party of Contractor Foreground Information, will be subject to the provisions of Section 13 (Third Party Sales and Transfers) of this MOU.

9.8. Contractor Background Information

9.8.1. Disclosure: Any Contractor Background Information (including Information subject to Intellectual Property Rights) generated and delivered by Contractors will be made available to the other PA Participants provided the following provisions are met:

9.8.1.1. such Contractor Background Information is necessary to or useful in the PA, with the

PA Participant in possession of the Information determining whether it is "necessary to" or "useful in" the PA;

- 9.8.1.2. such Contractor Background Information may be made available without incurring liability to holders of Intellectual Property Rights;
 - 9.8.1.3. disclosure is consistent with national disclosure policies and regulations of the furnishing PA Participant; and
 - 9.8.1.4. any disclosure or transfer of such Contractor Background Information to Contractors is consistent with the furnishing Participant's export control laws and regulations.
- 9.8.2. Use: Contractor Background Information furnished by one PA Participant's Contractors and disclosed to the other PA Participants may be used without charge by or for the other PA Participants for PA purposes only, and may be subject to further restrictions by holders of Intellectual Property Rights; however, the furnishing PA Participant will retain all its rights with respect to such Contractor Background Information. To the extent consistent with paragraph 9.8.1, where the use of Contractor Background Information is necessary to enable the use of Foreground Information, such Contractor Background Information may be used without charge for Defense Purposes. The furnishing PA Participant, in consultation with the other PA Participants, will determine whether the use of such Contractor Background Information is necessary.

9.9. Alternative Uses of Project Information

- 9.9.1. Any Background Information provided by one PA Participant will be used by the other PA Participants only for the purposes set out in this MOU, unless otherwise consented to in writing by the providing PA Participant.

- 9.9.2. The prior written consent of each PA Participant will be required for the use of Foreground Information for purposes other than those provided for in this MOU.

9.10. Patents

- 9.10.1. Where a PA Participant owns title to a Project Invention, or has the right to receive title to a Project Invention, that PA Participant will consult with the other PA Participants regarding the filing of a Patent application for such Project Invention. The PA Participant which has or receives title to such Project Invention will, in other countries, file, cause to be filed, or provide the other PA Participants with the opportunity to file on behalf of the PA Participant holding title, or its Contractors, as appropriate, Patent applications covering that Project Invention. If a PA Participant having filed or caused to be filed a Patent application decides to stop prosecution of the application or maintenance of the Patent, that PA Participant will notify the other PA Participants of that decision and permit the other PA Participants to continue the prosecution or maintenance.
- 9.10.2. The other PA Participants will be furnished with copies of Patent applications filed and Patents granted with regard to Project Inventions.
- 9.10.3. Where a PA Participant owns or has the right to receive title to a Project Invention, or its Contractor holds title or elects to retain title to a Project Invention, the other PA Participants will acquire a non-exclusive, irrevocable, royalty-free license to practice or have practiced, by or on behalf of the PA Participant, throughout the world for Defense Purposes, any such Project Invention.
- 9.10.4. Patent applications to be filed under a PA which contains Classified Information, will be protected and safeguarded in accordance with Section 12 (Security) and any applicable multilateral and bilateral treaties, agreements and arrangements.

9.10.5. Each PA Participant will notify the other PA Participants of any Patent infringement claims made in its territory arising in the course of work performed under a PA. Insofar as possible, the other PA Participants will provide Information available to it that may assist in defending the claim. Each PA Participant will be responsible for handling all Patent infringement claims made in its territory, and will consult with the other PA Participants during the handling, and prior to any settlement, of such claims. The PA Participants will share the costs of resolving Patent infringement claims in the same percentage as they share the full Financial Costs and Non-Financial Costs of the applicable PA or as they otherwise mutually determine. The PA Participants will, in accordance with their national laws and practices, give their authorization and consent for all use and manufacture in the course of work performed under a PA of any invention covered by a Patent issued by their respective countries.

SECTION 10

CONTROLLED UNCLASSIFIED INFORMATION

10.1. Except as otherwise provided in this MOU or as authorized in writing by the originating Participant, Controlled Unclassified Information provided or generated pursuant to this MOU will be controlled as follows:

- 10.1.1. Such Information will be used only for the purposes authorized for use of Project Information as specified in Section 9 (Disclosure and Use of Information).
- 10.1.2. Access to such Information will be limited to personnel whose access is necessary for the permitted use under subparagraph 10.1.1., and will be subject to the provisions of Section 13 (Third Party Sales and Transfers).
- 10.1.3. Each Participant will take all appropriate lawful steps, which may include national classification, available to it to keep such Information free from further disclosure (including requests under any legislative provisions), except as provided in subparagraph 10.1.2., unless the originating Participant consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the Information may have to be further disclosed under any legislative provision, immediate notification will be given to the originating Participant.

10.2. To assist in providing the appropriate controls, the originating Participant will ensure that Controlled Unclassified Information is appropriately marked to identify its "in confidence" nature. Australian export-controlled Information will be marked as "Australian Export Controlled." Canadian export-controlled Information will be marked as "Canadian export-controlled." Finnish export-controlled Information will be marked as "Finnish export-controlled." Kuwaiti export-controlled Information will be marked as "Kuwaiti export-controlled." Spanish export-controlled Information will be marked as "Spanish export-controlled." Swiss export-controlled Information will be marked as "Swiss export-controlled." U.S. export-controlled Information will be marked as "International Traffic in Arms Regulations (ITAR)-Controlled." The

Participants will decide, in advance and in writing, on the markings to be placed on any other types of Controlled Unclassified Information. The appropriate markings for all Controlled Unclassified Information will be reflected in the appropriate project documentation, such as the Project Plan.

10.3. Controlled Unclassified Information provided or generated pursuant to this MOU will be handled in a manner that ensures control as provided for in paragraph 10.1.

10.4. Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Participants will ensure the Contractors are legally bound to control such Information in accordance with the provisions of this Section.

SECTION 11

VISITS TO ESTABLISHMENTS

11.1. Each Participant will permit visits to its government establishments, agencies and laboratories, and Contractor industrial facilities by employees of the other Participants or by employees of the other Participants' Contractor(s), provided that the visit is authorized by the sending and receiving Participants and the employees have any necessary and appropriate security clearances and a need-to-know.

11.2. All visiting personnel will be required to comply with the security regulations of the host Participant. Any Information disclosed or made available to visitors will be treated as if supplied to the Participant sponsoring the visiting personnel, and will be subject to the provisions of this MOU.

11.3. Requests for visits by personnel of one Participant to a facility of another Participant will be coordinated through official channels, and will conform with the established visit procedures of the host country. Requests for visits will bear the name of this MOU and the name of the applicable PA, if any.

11.4. Lists of personnel of each Participant required to visit, on a continuing basis, facilities of the other Participants will be submitted through official channels in accordance with recurring international visit procedures.

SECTION 12

SECURITY

12.1. All Classified Information provided or generated pursuant to PAs under this MOU will be used, stored, handled, transmitted, and safeguarded in accordance with any applicable multilateral or bilateral treaties, agreements or arrangements, or national practices between the PA Participants concerned and with the PA Participants' national security laws and regulations.

12.2. Classified Information will be transferred only through official government-to-government channels or through channels approved by the DSAs of the PA Participants. Such Classified Information will bear the level of classification, denote the country of origin, the provisions of release, and the fact that the Information relates to this MOU and the applicable PA.

12.3. Each Participant will take all appropriate lawful steps available to it to ensure that Classified Information provided or generated pursuant to PAs under this MOU is protected from further disclosure except as provided by paragraph 12.9, unless the other PA Participants consent to such disclosure. Accordingly, each PA Participant will ensure that:

- 12.3.1. The recipient will not release the Classified Information to any government, national, organization, or other entity of a Third Party without the prior written consent of the originating PA Participant in accordance with the procedures set out in Section 13 (Third Party Sales and Transfers).
- 12.3.2. The recipient will not use the Classified Information for other than the purposes provided for in this MOU and the applicable PA.
- 12.3.3. The recipient will comply with any distribution and access restrictions on Classified Information that is provided under this MOU and the applicable PA.

12.4. The PA Participants will investigate all cases in which it is known or where there are grounds for suspecting that Classified Information provided or generated pursuant to a PA under this MOU has been lost or disclosed to unauthorized

persons. Each PA Participant also will promptly and fully inform the other PA Participants of the details of any such occurrences, the final results of the investigation, and of the corrective action taken to preclude recurrences.

12.5. The DSA of a PA Participant that awards a classified Contract under a PA concluded pursuant to this MOU will assume responsibility for administering within its territory security measures for the protection of the Classified Information, in accordance with its laws and regulations. Prior to the release to a Contractor, prospective Contractor, or subcontractor of any Classified Information provided or generated under the PA, the DSAs will:

- 12.5.1. Ensure that such Contractor, prospective Contractor, or subcontractor and its facility(ies) has the capability to protect the Classified Information adequately.
- 12.5.2. Grant the requisite security clearance to the facility(ies).
- 12.5.3. Grant the requisite security clearance for all personnel whose duties require access to the Classified Information.
- 12.5.4. Ensure that all persons having access to the Information are informed of their responsibilities to protect the Information in accordance with national security laws and regulations, and the provisions of this MOU and the applicable PA.
- 12.5.5. Carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected.
- 12.5.6. Ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of the applicable PA.

12.6. If a PA will involve Classified Information, the POs will prepare a PSI and a CG for that PA. The PSI and the CG will describe the methods by which Project Information will be classified, marked, used, transmitted, and safeguarded, and will require that markings for all export-controlled Classified Information will include the applicable export control markings